

Title	<i>Petition for Probate</i> (revise form DE-111).
Summary	Form DE-111 would be revised to clarify the form's instructions concerning the new graduated filing fee in decedents' estates and to clarify the information that is necessary for the court to determine the amount of the fiduciary's bond.
Source	Probate and Mental Health Advisory Committee, Hon. Thomas W. Stoevers, Chair
Staff	Douglas C. Miller, Committee Counsel, 415.865.7535, douglas.miller@jud.ca.gov
Discussion	<p>The <i>Petition for Probate</i> is the initial pleading that must be filed to commence a proceeding to administer the estate of a deceased person. The petition asks the court to admit the decedent's will, if any, to probate, and to appoint a personal representative of the estate.</p> <p>This form was revised effective August 18, 2003 by circulating order on an expedited basis to request information necessary for the petitioner to estimate the new graduated filing fee payable in decedents' estates commenced on or after that date.¹ The form features a new item 3 on page 1 for this purpose.</p> <p>Item 3a calls for the petitioner to select one of nine categories of estimated estate values, corresponding to the estate value categories in the statute on which the graduated fee is based.² The ninth and highest value category in item 3a consists of a space for an estate value to be inserted and instructions to specify that value. This category was intended for use only for estates valued at \$3.5 million or more, as estates valued at less than \$3.5 million are identified in the other categories. However, the instructions for this category do not clearly express that intent.</p> <p>The advisory committee would clarify these instructions by changing them to advise petitioners to complete the ninth value category only if</p>

¹ The graduated filing fee was imposed by two amendments to Government Code section 26827 effective August 17, 2003 and January 1, 2004. Stats.2003, ch. 159 (AB 1759), §§ 9, 27, and 29; Stats.2003, ch. 757 (AB 296), § 4.

² Filing fees based on the nine value categories range from a minimum of \$185 for an estate valued at less than \$250,000 to \$3,500 for an estate valued at \$2.5 million or more up to \$3.5 million. The filing fee for an estate valued at \$3.5 million or more is \$3,500 plus a percentage of the estate valued in excess of \$3.5 million.

the estate is valued at \$3.5 million or more.

The advisory committee would completely reorganize and revise item 4c, “[c]haracter and estimated value of the estate for bond purposes,” on page 2 of the form. As that title suggests, the information requested by this item enables the court to set the proper amount of the bond under Probate Code section 8482.³

Some practitioners may believe that the information requested in item 4c is required only for this purpose. The title encourages that belief, as do the existing instructions for item 4c(3) of the form, which ask for the net value of the real estate “if full authority under the Independent Administration of Estates Act is requested.” Petitioners often do not fully or even partially complete the item if the decedent’s will waives bond. Even if bond is not waived, item 4c(3) is often left blank if full authority under the Independent Administration of Estates Act has not been requested because the value of the estate’s real property will not be considered in setting the amount of bond.

The above-stated belief is incorrect. Probate Code section 8002 requires the petition filed to commence proceedings for administration of a decedent’s estate—the *Petition for Probate*—to state the character and estimated value of the property of the estate. The statute requires this information in all cases, whether or not bond is required and whether or not full authority for independent administration is requested. Section 8002 also does not call for the petition to state only the decedent’s interest—the value of the decedent’s equity—in estate real property. For all purposes in probate proceedings other than for setting the amount of the bond, the fair market or gross value of estate real property is the important value, not its net value to the decedent.

The revised form would therefore eliminate “for bond purposes” from the title of item 4c. Petitioners would be instructed to complete the item in all cases. The information requested would include the gross fair market value of the estate’s real property, the amount of all encumbrances against that property, and the decedent’s interest in that property derived by subtracting the encumbrances from the fair market

³ The maximum amount of bond required under section 8482 is in the amount of the estimated value of the estate’s personal property plus the probable annual gross income of the estate. If the personal representative has authority to administer the estate’s real property without court supervision under the Independent Administration of Estates Act—“full authority” under the Act—the amount of the bond must also be based on the value of the decedent’s interest in real property. See Probate Code, §§ 8482(a), 10402, 10403, and 10453.

value.

Completion of the entire item would satisfy section 8002, and would also specify the proper maximum amount of bond under section 8482. If full authority under the Independent Administration of Estates Act is requested, that amount would be found in the total in item 4c(7) of the revised form. If full authority has not been requested, that amount would be found in the subtotal in item 4c(3).

The advisory committee would also increase the form to four pages. This would permit several additional improvements to the form intended to reduce the need to provide information on separate attachments to the form. The improvements are as follows:

1. Item 9 on page 4 would be enlarged to almost a full page.

This item requests the identity of the decedent's heirs and beneficiaries, the persons who will be entitled to notice of the hearing on the petition. This information is necessary so the court can determine that proper notice of the hearing is given. The proposed revised form would accept up to eleven names and addresses. This will be sufficient in many estates for all of the heirs and beneficiaries to be listed without resort to a separate attachment for the purpose. Court staff should be able to identify the persons entitled to notice of the petition more quickly and accurately if they are all disclosed in item 9 in the form instead of being divided between the form and a separate attachment that might be separated by many pages from the main body of the form.

2. Space would be provided in the revised form for responses to items 4f(1)(d) on page two and 4(g) on page 3, questions concerning the personal representative of the estate.

No space is provided in the current form for responses to either item, making a separate attachment necessary every time those items must be answered. Revised item 4g would never require a separate attachment. Revised item 4f(1)(d) would not require a separate attachment in many estates.

3. Additional space would also be added to item 2d(3) on page 1 to permit a full statement of the name and address of the

institution where a blocked account will be established. The space available for this information in the current form is insufficient.

A copy of the proposed revised form DE-111 is attached at pages 5–8.
A copy of the existing form is attached at pages 9–11.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY <div style="text-align: center;"> DRAFT 5 02/18/04 </div> <div style="text-align: center;"> Not approved by the Judicial Council </div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
ESTATE OF (Name): _____ <div style="text-align: right;">DECEDENT</div>			
PETITION FOR <input type="checkbox"/> Probate of Will and for Letters Testamentary <input type="checkbox"/> Probate of Will and for Letters of Administration with Will Annexed <input type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> with general powers <input type="checkbox"/> Authorization to Administer Under the Independent Administration of Estates Act <input type="checkbox"/> with limited authority		CASE NUMBER: HEARING DATE: DEPT.: _____ TIME: _____	

1. Publication will be in (specify name of newspaper):

- a. ☐ Publication requested.
 b. ☐ Publication to be arranged.

2. **Petitioner (name each):**

requests that

- a. ☐ decedent's will and codicils, if any, be admitted to probate.
 b. ☐ (name):
 be appointed
 (1) ☐ executor
 (2) ☐ administrator with will annexed
 (3) ☐ administrator
 (4) ☐ special administrator ☐ with general powers and Letters issue upon qualification.
 c. ☐ full ☐ limited authority be granted to administer under the Independent Administration of Estates Act.
 d. (1) ☐ bond not be required for the reasons stated in item 4d.
 (2) ☐ \$ _____ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. (Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)
 (3) ☐ \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location):

3. a. **Estimated value of the estate for filing fee purposes** (Complete in all cases. The estimated value of the estate is the fair market value of the real and personal property of the estate at the date of the decedent's death, without reduction for encumbrances. See Gov. Code, § 26827.):

- | | |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| (1) <input type="checkbox"/> Less than \$250,000 | (6) <input type="checkbox"/> At least \$1.5 million and less than \$2 million |
| (2) <input type="checkbox"/> At least \$250,000 and less than \$500,000 | (7) <input type="checkbox"/> At least \$2 million and less than \$2.5 million |
| (3) <input type="checkbox"/> At least \$500,000 and less than \$750,000 | (8) <input type="checkbox"/> At least \$2.5 million and less than \$3.5 million |
| (4) <input type="checkbox"/> At least \$750,000 and less than \$1 million | (9) <input type="checkbox"/> \$ _____ * |
| (5) <input type="checkbox"/> At least \$1 million and less than \$1.5 million | |

* (For estates of \$3.5 million or more, specify total estimated value of estate.)

- b. ☐ This petition is not the first petition for appointment of a personal representative with general powers filed in this proceeding. The first petition was filed on (date):

ESTATE OF (Name): _____	CASE NUMBER: _____
DECEDENT	

4. a. Decedent died on (date): _____ at (place): _____
- (1) ☐ a resident of the county named above.
- (2) ☐ a nonresident of California and left an estate in the county named above located at (specify location permitting publication in the newspaper named in item 1): _____

b. Street address, city, and county of decedent's residence at time of death (specify): _____

c. **Character and estimated value of the property of the estate (complete in all cases):**

- | | | |
|-----------------------------------------------|--------------|-------|
| (1) Personal property: | \$ | |
| (2) Annual gross income from | | |
| (a) real property: | \$ | |
| (b) personal property: | \$ | _____ |
| (3) Subtotal (add (1) and (2)): | \$ | _____ |
| (4) Gross fair market value of real property: | \$ | _____ |
| (5) (Less) Encumbrances: | \$ (_____) | |
| (6) Net value of real property: | \$ | _____ |
| (7) Total (add (3) and (6)): | \$ | ===== |

- d. (1) ☐ Will waives bond. ☐ Special administrator is the named executor, and the will waives bond.
- (2) ☐ All beneficiaries are adults and have waived bond, and the will does not require a bond.
(Affix waiver as Attachment 4d(2).)
- (3) ☐ All heirs at law are adults and have waived bond. (Affix waiver as Attachment 4d(3).)
- (4) ☐ Sole personal representative is a corporate fiduciary or an exempt government agency.

- e. (1) ☐ Decedent died intestate.
- (2) ☐ Copy of decedent's will dated: _____ ☐ codicil dated (specify for each): _____
are affixed as Attachment 4e(2). (Include typed copies of handwritten documents and English translations of foreign-language documents.)
- ☐ The will and all codicils are self-proving (Prob. Code, § 8220).

f. **Appointment of personal representative (check all applicable boxes):**

- (1) Appointment of executor or administrator with will annexed:
- (a) ☐ Proposed executor is named as executor in the will and consents to act.
- (b) ☐ No executor is named in the will.
- (c) ☐ Proposed personal representative is a nominee of a person entitled to Letters.
(Affix nomination as Attachment 4f(1)(c).)
- (d) ☐ Other named executors will not act because of ☐ death ☐ declination
☐ other reasons (specify): _____

☐ Continued in Attachment 4f(1)(d).

- (2) Appointment of administrator:
- (a) ☐ Petitioner is a person entitled to Letters. (If necessary, explain priority in Attachment 4f(2)(a).)
- (b) ☐ Petitioner is a nominee of a person entitled to Letters. (Affix nomination as Attachment 4f(2)(b).)
- (c) ☐ Petitioner is related to the decedent as (specify): _____
- (3) ☐ Appointment of special administrator requested. (Specify grounds and requested powers in Attachment 4f(3).)

ESTATE OF (Name): <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>	CASE NUMBER: <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>
DECEDENT	

4. g. Proposed personal representative is a
☐ resident of California.
☐ nonresident of California (*specify permanent address*):
- ☐ resident of the United States.
☐ nonresident of the United States.
5. ☐ Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
6. a. Decedent is survived by (*check items (1) or (2), or (3) or (4), and all applicable items (5)–(8)*)
- (1) ☐ spouse.
 (2) ☐ no spouse as follows:
 (a) ☐ divorced or never married.
 (b) ☐ spouse deceased.
- (3) ☐ registered domestic partner.
 (4) ☐ no registered domestic partner.
 (*See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.*)
- (5) ☐ child as follows:
 (a) ☐ natural or adopted.
 (b) ☐ natural adopted by a third party.
- (6) ☐ no child.
 (7) ☐ issue of a predeceased child.
 (8) ☐ no issue of a predeceased child.
- b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (*See Prob. Code, § 6454.*)
7. (*Complete if decedent is survived by (1) a spouse or registered domestic partner but no issue (only a or b apply), or (2) no spouse, registered domestic partner, or issue. (Check the **first** box that applies):*)
- a. ☐ Decedent is survived by a parent or parents who are listed in item 9.
 b. ☐ Decedent is survived by issue of deceased parents, all of whom are listed in item 9.
 c. ☐ Decedent is survived by a grandparent or grandparents who are listed in item 9.
 d. ☐ Decedent is survived by issue of grandparents, all of whom are listed in item 9.
 e. ☐ Decedent is survived by issue of a predeceased spouse, all of whom are listed in item 9.
 f. ☐ Decedent is survived by next of kin, all of whom are listed in item 9.
 g. ☐ Decedent is survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 9.
 h. ☐ Decedent is survived by no known next of kin.
8. (*Complete only if no spouse or issue survived decedent.*)
- a. ☐ Decedent had no predeceased spouse.
 b. ☐ Decedent had a predeceased spouse who
- (1) ☐ died not more than 15 years before decedent and who owned an interest in **real property** that passed to decedent,
 (2) ☐ died not more than five years before decedent and who owned **personal property** valued at \$10,000 or more that passed to decedent,
 (*If you checked (1) or (2), check only the **first** box that applies*):
- (a) ☐ Decedent is survived by issue of a predeceased spouse, all of whom are listed in item 9.
 (b) ☐ Decedent is survived by a parent or parents of the predeceased spouse who are listed in item 9.
 (c) ☐ Decedent is survived by issue of a parent of the predeceased spouse, all of whom are listed in item 9.
 (d) ☐ Decedent is survived by next of kin of the decedent, all of whom are listed in item 9.
 (e) ☐ Decedent is survived by next of kin of the predeceased spouse, all of whom are listed in item 9.
- (3) ☐ neither (1) nor (2) apply.

ESTATE OF (Name): _____	CASE NUMBER: _____
DECEDENT	

9. Listed below are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 6, 7, and 8; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

<u>Name and relationship to decedent</u>	<u>Age</u>	<u>Address</u>
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☐ Continued on Attachment 9.

10. Number of pages attached: _____

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF ATTORNEY)		(SIGNATURE OF ATTORNEY)*

* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF PETITIONER)		(SIGNATURE OF PETITIONER)

_____	▶	_____
(TYPE OR PRINT NAME OF PETITIONER)		(SIGNATURE OF PETITIONER)

☐ Signatures of additional petitioners follow last attachment.